

I45QBROp

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA

4 v.

16 CR 436 (KMW) (HBP)
Plea

5 STEVEN BROWN

6 Defendant

-----x

7 New York, N.Y.
8 April 5, 2018
2:30 p.m.

9 Before:

10 HON. HENRY B. PITMAN

11 Magistrate Judge

12 APPEARANCES

13 GEOFFREY S. BERMAN

14 Interim United States Attorney for the
Southern District of New York

15 KATHERINE REILLY

16 NOAH SOLOWIEJCZYK

RYAN FINKEL

Assistant United States Attorney

17 DOAR RIECK KALEY & MACK

18 Attorneys for Defendant

19 WALTER MACK

DAVID RIVERA

20 MICHAEL MINNEFOR

21 -Also Present-

22 Christopher Carusone, Defense Paralegal Specialist

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(Case called)

MS. REILLY: Good afternoon, your Honor.

Katherine Reilly, Noah Solowiejczyk and Ryan Finkel
for the government.

MR. MACK: Good afternoon, your Honor.

Walter Mack, David Rivera, Michael Minnefor and
paralegal, Christopher Carusone, for defendant, Steven Brown,
who is sitting to my right.

THE COURT: Good afternoon all.

MR. MACK: Good afternoon, your Honor.

THE COURT: I just wanted this on the record.
Mr. Mack and I overlapped in the U.S. Attorney's Office many,
many years ago. I haven't socialized with him. I don't
socialize with him. I don't think there's any conflict given
the nature of the proceeding this afternoon, but I just want to
put that on the record. OK?

I understand there is an application on behalf of
Mr. Brown.

MR. MACK: Yes, there is, your Honor, and that is to
withdraw his previously entered plea of not guilty to the
superseding indictment that's been filed against him, and to
withdraw and intend to plead guilty to a superseding
information that the government has prepared.

THE COURT: OK. The first order of business then will
be for Mr. Cancellaraich to conduct the waiver of indictment

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1 allocution.

2 Mr. Cancellaraich.

3 DEPUTY CLERK: You are Steven Brown?

4 THE DEFENDANT: Yes, sir.

5 DEPUTY CLERK: Have you signed this waiver of
6 indictment?

7 THE DEFENDANT: Yes, sir.

8 DEPUTY CLERK: Before you signed it, did you discuss
9 it with your attorney?

10 THE DEFENDANT: Yes, sir.

11 DEPUTY CLERK: Did your attorney explain it to you?

12 THE DEFENDANT: Yes, sir.

13 DEPUTY CLERK: Do you understand what you are doing?

14 THE DEFENDANT: Yes, sir.

15 DEPUTY CLERK: Do you understand that you are under no
16 obligation to waive indictment?

17 THE DEFENDANT: Yes, sir.

18 DEPUTY CLERK: Do you understand if you do not waive
19 indictment and the government wants to prosecute you, they
20 would have to present this case to a grand jury, which may or
21 may not indict you?

22 THE DEFENDANT: Yes, sir.

23 DEPUTY CLERK: Do you understand that by signing this
24 waiver of indictment, you've given up your right to have this
25 case presented to a grand jury?

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1 THE DEFENDANT: Yes, I understand.

2 DEPUTY CLERK: Do you understand what a grand jury is?

3 THE DEFENDANT: Yes, sir.

4 DEPUTY CLERK: Have you seen a copy of the
5 information?

6 THE DEFENDANT: Yes, sir.

7 DEPUTY CLERK: Do you waive its public reading?

8 THE DEFENDANT: What did he say?

9 MR. MACK: Waive the public reading.

10 DEPUTY CLERK: Do you waive its public reading?

11 THE DEFENDANT: Yes, sir.

12 DEPUTY CLERK: Thank you.

13 THE COURT: I am next going to ask Mr. Cancellaraich
14 to place two documents before Mr. Brown. There is a one-page
15 document entitled Consent to Proceed Before an United States
16 Magistrate Judge on a Felony Plea Allocution, and a second
17 document in the form of a letter that I'll ask him to mark as
18 Court Exhibit 1.

19 Mr. Brown, two documents have been placed before you.
20 You can remain seated, it's OK.

21 Two documents have been placed before you. I first
22 want to discuss with you the one-page document entitled Consent
23 to Proceed Before a United States Magistrate Judge on a Felony
24 Plea Allocution. Do you see that one-page document, sir?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Does your signature appear on the bottom
2 of it?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did you read it before you signed it?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did you discuss it with your attorney
7 before you signed it?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that you have the right
10 to have your plea taken by a District Court Judge instead of a
11 Magistrate Judge. Do you understand you have that right?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that by signing that
14 piece of paper, you're giving up your right to have your plea
15 taken by a district judge and consenting to having it taken by
16 a magistrate judge. Do you understand that's the effect of
17 your signature on that piece of paper?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Has anyone made any promises to you or has
20 anyone made any threats to you or has anyone used any force
21 against you to induce you to consent to proceed before a
22 magistrate judge?

23 THE DEFENDANT: No.

24 THE COURT: OK.

25 THE DEFENDANT: No, sir.

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1 THE COURT: OK. There's a second document before you
2 in the form of a letter marked Court Exhibit 1. Do you see
3 Court Exhibit 1?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Does your signature appear on the last
6 page of Court Exhibit 1?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did you read Court Exhibit 1 before you
9 signed it?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And did you discuss it with your attorney
12 before you signed it?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And is that an agreement with the
15 government concerning your plea?

16 THE DEFENDANT: What did he say?

17 THE COURT: Is Court Exhibit 1 an agreement with the
18 government concerning your plea?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: OK. Thank you.

21 Would you please place Mr. Brown under oath.

22 DEPUTY CLERK: State your name for the record, please.

23 THE DEFENDANT: Steven Brown.

24 (Defendant sworn)

25 DEPUTY CLERK: Thank you.

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1 THE COURT: You can be seated, Mr. Brown.

2 Mr. Brown, you've now been placed under oath. If you
3 make a false statement during these proceedings, you can be
4 prosecuted for perjury. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Brown, the law requires that I ask you
7 a number of questions to ensure that your plea is knowing and
8 voluntary in all respects, to ensure that you understand what
9 you're doing here this afternoon, and to ensure that you
10 understand the consequences of what you're doing.

11 If you don't understand any question that I ask you,
12 tell me that you don't understand the question, and I'll either
13 try to clarify the question or give you a chance to speak
14 privately with your attorney so that you understand exactly
15 what's being asked of you.

16 In addition, if at any time during these proceedings
17 you want to speak with your attorney for any reason whatsoever,
18 just tell me that you want to speak with your attorney, and
19 I'll give you a chance to speak with him privately. Do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: OK. Just one preliminary matter. The
23 government has provided me with a statement of the elements of
24 the offense. My understanding is that for 1349, an overt act
25 is not a required element under the strength of the Second

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1 Circuit's decision in *United States v. Roy* from 2015. Does
2 counsel have a different view?

3 MS. REILLY: No, your Honor. That's correct's, and
4 it's our error.

5 THE COURT: Mr. Mack.

6 MR. MACK: No, your Honor. I think I actually
7 mentioned that subject at an earlier time.

8 THE COURT: Fine.

9 Mr. Brown, please state your full name.

10 THE DEFENDANT: Steven James Brown.

11 THE COURT: How old are you, sir?

12 THE DEFENDANT: 48.

13 THE COURT: How far did you get in school?

14 THE DEFENDANT: College graduate.

15 THE COURT: Have you recently been treated for any
16 type of mental illness?

17 THE DEFENDANT: Mental? No.

18 THE COURT: Mr. Brown, the law requires that I
19 establish a factual basis concerning your competency to plead
20 guilty. That's what some of these introductory questions are
21 aimed at, OK?

22 THE DEFENDANT: OK.

23 THE COURT: Have you recently been treated for drug
24 addiction?

25 THE DEFENDANT: No.

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1 THE COURT: Have you recently been treated for
2 alcoholism?

3 THE DEFENDANT: No.

4 THE COURT: Have you had any beer, wine or liquor
5 within the last 24 hours?

6 THE DEFENDANT: No.

7 THE COURT: Let me ask that question again. I'm not
8 sure if the reporter heard you.

9 Have you had any beer, wine or liquor within the last
10 24 hours?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Have you taken any kind of drugs or
13 medication, legal or illegal, within the last two days?

14 THE DEFENDANT: Yes, your Honor. I'm on a series of
15 prescription medicine.

16 THE COURT: OK. And what kind of conditions are those
17 medications for?

18 THE DEFENDANT: Chronic asthma affecting my
19 respiratory and breathing system and problems.

20 THE COURT: OK. Is there anything about those
21 medications that affects your ability to think or to
22 understand?

23 THE DEFENDANT: No.

24 THE COURT: Is there anything about those -- do those
25 medications make you drowsy?

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1 THE DEFENDANT: No.

2 THE COURT: OK. Apart from asthma, are you currently
3 seeing a doctor?

4 THE DEFENDANT: Yes.

5 THE COURT: Or healthcare provider for any other
6 conditions?

7 THE DEFENDANT: Yes.

8 THE COURT: What other conditions are you seeing a
9 doctor for?

10 THE DEFENDANT: Oh. Can I ask him?

11 THE COURT: Sure.

12 (Counsel and defendant confer)

13 THE DEFENDANT: I am currently under the supervision
14 of a doctor for some of my breathing and heart problems.

15 THE COURT: Is there anything about those medical
16 conditions that affects your ability to think or to understand?

17 THE DEFENDANT: I personally don't think so, no.

18 THE COURT: In general, do you feel clear-headed today
19 and able to understand what's going on around you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is either the government or defense
22 counsel aware of any physical, psychological or emotional
23 condition that might prevent Mr. Brown from entering a guilty
24 plea today?

25 MS. REILLY: No, your Honor.

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1 MR. MACK: No, your Honor.

2 THE COURT: Mr. Brown, have you received a copy of
3 information (S9) 16 CR 436 which has been filed against you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And have you had a chance to read the
6 information and to discuss it with your attorney, Mr. Mack?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Are you generally satisfied with
9 Mr. Mack's representation of you in this case and with the
10 advice that he's given to you?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Is it your intention here today to plead
13 guilty to Count One of that superseding information?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: I want to discuss with you briefly the
16 nature of the charge against you, the elements the government
17 would have to prove at trial to establish your guilt, and the
18 penalties you face if your plea is accepted.

19 Do you understand that Count One of the information
20 charges you with violating Title 18 United States Code, Section
21 1349. Among other things, that statute makes it a crime to
22 conspire or to agree with others to commit the offense of wire
23 fraud.

24 Do you understand that's the nature of the charge
25 against you?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that in order to
3 establish your guilt at trial, the government would have to
4 prove two elements beyond a reasonable doubt:

5 First, the government would have to prove that two or
6 more people entered into an agreement to commit the offense of
7 wire fraud.

8 Second, the government would have to prove that you
9 knowingly entered into and became part of that agreement with
10 knowledge of its illegal object.

11 Do you understand those are the elements the
12 government would have to prove at trial to establish your
13 guilt?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that if your plea is
16 accepted, you face a maximum sentence of 20 years imprisonment,
17 a maximum term of supervised release of three years, a maximum
18 fine of the greatest of \$250,000 or twice the gross pecuniary
19 gain derived from the offense or twice the gross pecuniary loss
20 to persons other than yourself, plus a mandatory special
21 assessment.

22 Do you understand those are the penalties you face if
23 your plea is accepted?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: In addition to those penalties, do you

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1 also understand that the Court must enter an order of
2 restitution directing that you pay back to any identifiable
3 victim any loss resulting from your conduct, and that the Court
4 must also enter an order of forfeiture directing that you
5 forfeit to the government any proceeds from your illegal
6 conduct or anything you may have purchased with the proceeds of
7 your illegal conduct. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Brown, a plea to a felony can also
10 have serious immigration consequences for individuals who are
11 not United States citizens. Do you understand that if you are
12 not a United States citizen, another consequence of your plea
13 is that at the conclusion of your sentence, you will be
14 deported or removed from the United States and prohibited from
15 ever reentering? Do you understand that's another consequence
16 of your plea, but only if you're not a United States citizen.
17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: OK. Do you understand that under the
20 Sentencing Reform Act of 1984, the United States Sentencing
21 Commission has issued advisory guidelines for judges to consult
22 in imposing sentences in criminal cases. Do you understand
23 that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you and your attorney discussed how

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1 the guidelines might apply in your case?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you understand that Judge Wood, the
4 judge who is going to sentence you in this case, will not be
5 able to determine the guideline sentence for your case until a
6 document called a presentence report has been prepared and
7 until both you and the government have had the opportunity to
8 review that report and review the facts in the report and the
9 guideline range recommended by the probation department. Do
10 you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And do you understand that the guideline
13 range found to apply in your case may turn out to be different
14 from any range you've discussed with your attorney or any range
15 you've agreed to with the government. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that after your
18 guideline range has been determined, the Court has the
19 authority to depart from the guidelines and to impose a
20 sentence that's either more severe or less severe than the
21 sentence called for by the guidelines. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that the form of early
24 release known as parole has been abolished in the federal
25 system, and that if you are sentenced to a term of

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1 imprisonment, you will not be released on parole. Do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that if supervised
5 release is imposed as part of your sentence and you violate any
6 term of the supervised release, you can be returned to jail for
7 the full term of the supervised release with no credit being
8 given for time spent on release up to the date of the
9 violation. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that as part of your
12 agreement with the government, you are stipulating to a
13 guidelines range of 51 to 63 months of imprisonment, and you
14 are giving up any right you might otherwise have to challenge
15 your sentence so long as the sentence is not greater than 63
16 months. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that if Judge Wood were
19 to impose a sentence of less than 51 months; that is, less than
20 the lower end of the stipulated range, the government would
21 have the right to appeal that sentence and seek a sentence
22 within the stipulated range of 51 to 63 months. Do you
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that your agreement with

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1 the government concerning sentencing is not binding on Judge
2 Wood, and that Judge Wood retains the power to impose any legal
3 sentence, including a sentence of up to 20 years imprisonment.
4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that if Judge Wood
7 imposed a sentence that was greater than 63 months; that is,
8 greater than the top end of the stipulated range, you would
9 then have the right to appeal the sentence and seek a sentence
10 within the stipulated range, but you would not be permitted to
11 withdraw your guilty plea simply because the sentence was
12 greater than you expected. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: I want to discuss with you some of the
15 rights you're giving up by pleading guilty.

16 Do you understand that you have the right to plead not
17 guilty to the charges against you, and you have the right to
18 persist in that plea at all stages of the proceedings against
19 you? Do you understand you have those rights?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that if you chose to
22 plead not guilty, you'd have the right to the assistance of
23 counsel at all stages of the proceedings against you, and you'd
24 have the right to have counsel appointed for you if you could
25 not afford counsel. Do you understand you have those rights?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that if you chose to
3 plead not guilty, you'd have the right to a trial by jury. At
4 the trial, you would be presumed innocent and the government
5 would have to prove your guilt beyond a reasonable doubt.

6 At a trial, you'd have the right to the assistance of
7 counsel. You would have the right to have counsel appointed if
8 you could not afford counsel. You would have the right to see
9 and hear all the witnesses against you, and you'd have the
10 right to have those witnesses cross-examined or questioned in
11 your own defense.

12 At a trial, you'd have the right to testify and the
13 right to offer evidence in your defense. You'd also have the
14 right to decline to testify or to decline to offer evidence.
15 And if you chose not to testify or chose not to offer evidence,
16 those facts could not be used against you.

17 Finally, at a trial, you'd have the right to the
18 issuance of compulsory process or court orders to compel
19 witnesses to come to court and give testimony in your behalf.

20 Do you understand you'd have all those rights if you
21 chose to plead not guilty and go to trial?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you understand by entering a plea
24 of guilty, if the plea is accepted, you'll be giving up your
25 right to a trial as well as all the other rights associated

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1 with a trial I've just described to you? Do you understand
2 you're giving up all those rights?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Having learned all the rights you would
5 have if you chose to plead not guilty and go to trial, is it
6 still your intention to plead guilty here this afternoon?

7 THE DEFENDANT: Yes.

8 THE COURT: Apart from the agreements that are set
9 forth in Court Exhibit 1, which is the letter agreement that
10 you identified at the outset of these proceedings, apart from
11 those agreements, has anyone made any other promises to you or
12 has anyone made any threats to you or has anyone used any force
13 against you to induce you to plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you pleading guilty because you are in
16 fact guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: OK. Can you tell us, please, what it is
19 you did that makes you guilty of Count One in information
20 (S9) 16 CR 436.

21 THE DEFENDANT: Your Honor, during the period
22 identified in the superseding information, I ended up agreeing
23 to participate with others in a film investment project program
24 which I learned relied on false investor representation.

25 THE COURT: Can you pull the microphone a little

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1 closer, Mr. Mack?

2 Why don't you start again please, Mr. Brown.

3 MR. MACK: Read slowly and loud and clear so the judge
4 can hear you.

5 THE COURT: OK?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Much better. Go ahead.

8 THE DEFENDANT: During the period identified in the
9 superseding information, I ended up agreeing to participate
10 with others in a film investment project program, which I
11 learned relied on false investor representations and inaccurate
12 statements regarding financial commitments and false banking
13 records. I did come to learn that information I provided to
14 potential investors was at times false, misleading and
15 deceptive, and I continued to participate in these film
16 projects to my advantage, which included making representations
17 to investors, which I had reason to believe were false without
18 taking the necessary and appropriate steps to expose and remedy
19 this criminal conduct, all to my everlasting regret.

20 The criminal conduct occasionally occurred in the
21 Southern District of New York and did rely upon interstate wire
22 communications, including telephone calls, email messages and
23 the transmission of false and misleading documents that often
24 included or traveled through me.

25 THE COURT: Does the government believe any further

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1 inquiry is necessary concerning the facts of the offense?

2 MS. REILLY: No, your Honor. Thank you.

3 THE COURT: OK. Does the government represent that it
4 has facts in its possession to prove Mr. Brown's guilt beyond a
5 reasonable doubt?

6 MS. REILLY: We do, your Honor.

7 THE COURT: All right. Mr. Brown, how do you plead to
8 Count One of information (S9) 16 CR 436? Guilty or not guilty.

9 THE DEFENDANT: Guilty, your Honor.

10 THE COURT: Thank you.

11 Does the government believe any inquiry should be made
12 concerning any matter?

13 MS. REILLY: Nothing further, your Honor.

14 THE COURT: Mr. Mack, do you believe any further
15 inquiry should be matter concerning any matter?

16 MR. MACK: I do not, your Honor.

17 THE COURT: Thank you.

18 Based on Mr. Brown's physical appearance, his demeanor
19 and his answers to all of the foregoing questions, I find that
20 he is fully competent and capable of entering an informed and
21 voluntary plea; that he's aware of the nature of the charge
22 against him and the consequences of the plea; and that the plea
23 is knowing and voluntary and supported by an independent basis
24 in fact as to each of the essential elements of the offense.

25 I, therefore, accept the plea and recommend that Judge

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1 Wood accept the plea.

2 Has Judge Wood set a date and time for sentencing?

3 MS. REILLY: She has, your Honor. She has set a
4 sentencing date of July 18 at 2:00 p.m.

5 THE COURT: Sentencing will proceed before Judge Wood
6 on July 18 at 2:00 p.m.

7 A presentence report will be ordered. I will mark the
8 form that defense counsel should be present for the interview.
9 I'm going to direct defense counsel to contact the probation
10 department to schedule the interview within the next 14 days.
11 I'm also going to direct the government to submit the
12 prosecution case summary to the probation department within the
13 next 14 days.

14 OK? Anything else from the government?

15 MS. REILLY: Nothing further, your Honor.

16 THE COURT: Mr. Mack, anything else?

17 MR. MACK: The only thing, your Honor, is that
18 Mr. Brown is actually a resident of Los Angeles so there may
19 very well be a question every time he has to fly here, and what
20 have you. So I think there may be -- I will discuss that with
21 the probation department here as to what the best way given who
22 should prepare the report and where he might be supervised
23 eventually, whatever the situation is.

24 THE COURT: OK. I think probation is the best
25 organization to discuss that with.

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1 MR. MACK: Absolutely. Again, your Honor, thank you
2 for being willing to schedule this this afternoon and being
3 able for Mr. Brown to be able to attend today.

4 THE COURT: Happy to do it. My pleasure.

5 Anything else for me to decide?

6 MS. REILLY: No. Thank you, your Honor.

7 THE COURT: Thank you all.

8 (Adjourned)